

267



01/21/03

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT: MALCOLM G. SMITH, SR.)
SERIAL NO.: 09/663,832) GROUP ART UNIT
FILED: SEPTEMBER 15, 2000) 2876
FOR: ROTATIONAL PORTABLE CARD HAVING) EXAMINER
DATA STORAGE DEVICE, APPARATUS) DANIEL S. HESS
AND METHOD FOR USING SAME)

Commissioner of Patents
and Trademarks
Washington, D.C. 20231

COMMUNICATION IN RESPONSE
TO NOTICE OF ABANDONMENT

Dear Sir:

This COMMUNICATION is responsive to the NOTICE OF

I hereby certify that this correspondence is
being deposited with the United States Postal
Service as EXPRESS MAIL NO. EU788311335US in
an envelope addressed to:
Commissioner of Patents and Trademarks,
Washington, D.C. 20231, January 16, 2003.

Date of Signing: January 16, 2003

Signature: [Signature]

Date of Mailing: January 16, 2003

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ABANDONMENT mailed December 15, 2002 from Examiner Daniel S. Hess. A copy of the NOTICE OF ABANDONMENT is labeled EXHIBIT A and attached hereto for reference.

The NOTICE OF ABANDONMENT had Section 7 thereof checked which is captioned "The reason(s) below;" and the Examiner made the following objectionable statement as the response to the above caption, to wit:

In a phone conversation on Monday, Dec. 23, applicant's representative, Mr. Dan Mahoney Jr indicated that the case has intentionally been allowed to go abandoned.

The undersigned strongly objects to the above erroneous statement and reason for the following reasons.

The phone call of December 23, 2002, was conducted between Examiner Hess and my Secretary, Ellen Sesma. The undersigned did not participate in the phone call of December 23, 2002.

Enclosed herewith is a DECLARATION OF ELLEN SESMA IN SUPPORT OF COMMUNICATION IN RESPONSE TO NOTICE OF ABANDONMENT which states, in pertinent parts, as follows:

3. On or about December 23, 2002, I received a phone call from Examiner Daniel S. Hess [(703) 305-3841] inquiring if a response had been filed to the outstanding Office Action. I advised Examiner Hess "Yes, we did not file a response.". That was the extent of our discussion.

4. A copy of my hand written notes which I made contemporaneously at the time of the phone call from Examiner Hess is identified as EXHIBIT A and attached hereto. My handwritten notes contain my response "Yes, we did not file a response" which corroborates my statement made to Examiner Hess.

5. At no time did I indicate to or otherwise communicate to Examiner Hess that the application was intentionally allowed to go abandoned. The reason for this is that I had personal knowledge that the Assignee/Owner of this Application was having financial difficulties and that it was the

intent of the Assignee/Owner that when the financial resources to proceed were obtained, the Assignee/Owner intended to continue prosecution of this Application including, if necessary, the filing of a petition to revive of an application for patent abandoned unintentionally.

6. Examiner Hess did not discuss this matter with Daniel J. Meaney, Jr. Therefore, the statement; "In a phone conversation on Monday, Dec 23, applicant's representative Mr. Dan Mahoney Jr. indicated that the case has been intentionally allowed to go abandoned" is incorrect, inaccurate and does not represent the true reasons for the Application becoming abandoned. Further, the name Mr. Dan Mahoney Jr. is not the name of the attorney of record, Daniel J. Meaney, Jr.,.

7. The NOTICE OF ABANDONMENT was also signed by Karl D. Frech, Primary Examiner.

Neither Daniel J. Meaney, Jr., or I discussed this matter with Karl D. Frech, Primary Examiner.

The undersigned is filing this COMMUNICATION and DECLARATION OF ELLEN SESMA IN SUPPORT OF COMMUNICATION IN RESPONSE TO NOTICE OF ABANDONMENT in order to make of record that this application was not intentionally abandoned. It is and was not the intent of the undersigned or of the Assignee/Owner or of the Applicant to expressly or other wise intentionally abandoned this Application.

The undersigned has kept the Assignee/Owner informed, both orally and in writing, as to the status of this Application including the fact that a response was due to an outstanding Office Action. The Assignee/Owner was and is having financial difficulties and has been unable to pay the fees and costs for filing a response and continuing prosecution of this Application. The Assignee/Owner and is exercising continuous and diligent efforts to obtain financing, but to date has not been successful in doing so. At all times, it was the intent of the Assignee/Owner that when the financing was or is obtained, that the Assignee/Owner intends to continue prosecution of this Application including the filing of a PETITION FOR REVIVAL OF AN

APPLICATION FOR PATENT ABANDONED UNINTENTIONALLY UNDER 37 CFR 1,137(b) .

The Statement and Reason set forth on the NOTICE OF ABANDONMENT is not only inaccurate, incorrect and without factual basis, it is extremely prejudicial to the Applicant and Assignee/Owner and would, if unchallenged, viciate a Petition to Revive filed for or on behalf of the Assignee/Owner. It is and always has been Applicant's and Assignee/Owner intent that, upon receiving the sought after financing, the Assignee/Owner would retain and continue to have the right to continue prosecution of this Application including the right to file a PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNINTENTIONALLY UNDER 37 CFR 1,137(b), all without prejudice.

The undersigned had a similar situation in another United States Patent Application involving Primary Examiner Karl D. Frech. In that instance, the Examiner provided the following reason in Paragraph 7 of the Notice of Abandonment:

Examiner Walsh telephoned Mr. Meaney on 12-20-02. The abandoned status of the case was confirmed.

A copy of the referenced Notice of Abandonment is labeled Exhibit B and attached for reference.

The statement in the Notice of Abandonment of Exhibit B is a correct statement and does not prejudice the Assignee/Owner. The undersigned respectfully notes that the Notice of Abandonment of Exhibit B was signed by Primary Examiner Karl D. Frech, the same Primary Examiner which signed the Notice of Abandonment of Exhibit A.

It is respectfully noted that perhaps Examiner Hess confused this Application with another Application and/or discussion with another Attorney resulting in this incorrect, inaccurate and prejudicial statement appearing on the NOTICE OF ABANDONMENT of Exhibit A.

The undersigned respectfully request the Primary Examiner Karl D. Frech to issue a Corrected Notice of Abandonment with the following notation:

Examiner Hess telephoned Mr. Meaney's office on December 23, 2002. The abandoned status of the case was confirmed.

In summary, the abandonment was unintentional and any delay in filing a Petition to Revive was and will continue to be unintentional.

Respectfully submitted,



Daniel J. Meaney, Jr.
Registration No. 22179
Attorney for Applicants

P.O. Box 22307
Santa Barbara, California 93121-2307
Telephone: (805) 687-6909
Dated: January 16, 2003
267 5578comm



Notice of Abandonment

Application No.

09/663,832

Examiner

Daniel A Hess

Applicant(s)

SMITH, MALCOLM G.

Art Unit

2876

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

his application is abandoned in view of:

☒ Applicant's failure to timely file a proper reply to the Office letter mailed on 19 June 2002.

(a) ☐ A reply was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply (including a total extension of time of _____ month(s)) which expired on _____.

(b) ☐ A proposed reply was received on _____, but it does not constitute a proper reply under 37 CFR 1.113 (a) to the final rejection.

(A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).

(c) ☐ A reply was received on _____ but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).

(d) ☒ No reply has been received.

☐ Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).

(a) ☐ The issue fee and publication fee, if applicable, was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).

(b) ☐ The submitted fee of \$_____ is insufficient. A balance of \$_____ is due.

The issue fee required by 37 CFR 1.18 is \$_____. The publication fee, if required by 37 CFR 1.18(d), is \$_____.

(c) ☐ The issue fee and publication fee, if applicable, has not been received.

☐ Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).

(a) ☐ Proposed corrected drawings were received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply.

(b) ☐ No corrected drawings have been received.

☐ The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.

☐ The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.

☐ The decision by the Board of Patent Appeals and Interference rendered on _____ and because the period for seeking court review of the decision has expired and there are no allowed claims.

☒ The reason(s) below:

In a phone conversation on Monday, Dec. 23, applicant's representative, Mr. Dan Mahoney Jr., indicated that the case has intentionally been allowed to go abandoned.

KARL D. FRECH
PRIMARY EXAMINER

ditions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.

Patent and Trademark Office

3-1432 (Rev. 04-01)

Notice of Abandonment
EXHIBIT A

Part of Paper No. 3



Notice of Abandonment

Application No.

09/502,812

Examiner

Daniel I Walsh

Applicant(s)

COOK ET AL.

Art Unit

2876

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

This application is abandoned in view of:

1. ☒ Applicant's failure to timely file a proper reply to the Office letter mailed on 19 June 2002.
 - (a) ☐ A reply was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply (including a total extension of time of _____ month(s)) which expired on _____.
 - (b) ☐ A proposed reply was received on _____, but it does not constitute a proper reply under 37 CFR 1.113 (a) to the final rejection. (A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
 - (c) ☐ A reply was received on _____ but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).
 - (d) ☒ No reply has been received.
2. ☐ Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
 - (a) ☐ The issue fee and publication fee, if applicable, was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).
 - (b) ☐ The submitted fee of \$_____ is insufficient. A balance of \$_____ is due.
The issue fee required by 37 CFR 1.18 is \$_____. The publication fee, if required by 37 CFR 1.18(d), is \$_____.
 - (c) ☐ The issue fee and publication fee, if applicable, has not been received.
3. ☐ Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).
 - (a) ☐ Proposed corrected drawings were received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply.
 - (b) ☐ No corrected drawings have been received.
4. ☐ The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.
5. ☐ The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.
6. ☐ The decision by the Board of Patent Appeals and Interference rendered on _____ and because the period for seeking court review of the decision has expired and there are no allowed claims.
7. ☒ The reason(s) below:

Examiner Walsh telephoned Mr. Meaney on 12-20-02. The abandoned status of the case was confirmed.

KARL D. FRECH
PRIMARY

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.



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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT: MALCOLM G. SMITH, SR.)
SERIAL NO.: 09/663,832) GROUP ART UNIT
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FOR: ROTATIONAL PORTABLE CARD HAVING) EXAMINER
DATA STORAGE DEVICE, APPARATUS) DANIEL S. HESS
AND METHOD FOR USING SAME)

Commissioner of Patents
and Trademarks
Washington, D.C. 20231

CERTIFICATE OF FILING DOCUMENTS BY EXPRESS MAIL

Dear Sir:

Enclosed are the following documents:

I hereby certify that this I hereby certify that this
correspondence is being deposited with the United
States Postal Service as EXPRESS MAIL NO.
EU788311335US in an envelope addressed to:
Honorable Commissioner of Patents and Trademarks,
Washington, D.C. 20231, on January 16, 2003.

Date of Signing: January 16, 2003

Signature: [Signature]

Date of Mailing: January 16, 2003

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- (2) COMMUNICATION IN RESPONSE TO NOTICE OF ABANDONMENT
with Exhibits A and B;
- (3) DECLARATION OF ELLENT SESMA IN SUPPORT OF
COMMUNICATION IN RESPONSE TO NOTICE OF ABANDONMENT
with Exhibit A; and
- (3) POSTCARD.

We respectfully request a filing date of August 26, 2002,
the date of mailing the above-referenced documents, pursuant to
the provisions of 37 C.F.R. Section 1.10.

Respectfully submitted,



Daniel J. Meaney, Jr.
Registration No. 22179
Attorney for Applicant

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Santa Barbara, California 93121-2307
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Dated: January 16, 2003
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